WP(C) 706/2007

BEFORE

THE HON’BLE MR JUSTICE HRISHIKESH ROY

Heard Mr. A. Sharif, the learned counsel appearing for the petitioner. Also heard Mr. A. M. Mazumdar, the learned Senior Counsel, appearing for the respondent No. 6 as well as Ms. M. Gogoi, learned Standing Counsel appearing on behalf of the Education Department. .

2. The petitioner, B.A. Degree holder, who is an Assistant Teacher in Mohammadia Senior Madrassa, Nitainagar, Hailakandi, is before this Court challenging the order dated 22.1.2007 passed by the Deputy Director, Madrassa Education, Assam. The said order came to be passed while the Deputy Director was considering the representation dated 5.6.2006 filed by one Razia Begum Laskar (respondent No. 6), which was ordered to be disposed of by this Court on 6.9.2006, while disposing of the Writ Petition No. 3627/2006 filed by Razia Begum Laskar (respondent No. 6 herein).

3. The Writ Petition No. 3627 of 2006 was filed by Razia Begum Laskar claiming that she was appointed in the Mohammadia Senior Madrassa of Village Nitainagar under Hailakandi District and her name was reflected as a Teacher in the Inspection Report dated 4.3.1998 given by the Deputy Director of the Madrassa Education who inspected the said Madrassa. It was further contended that the name of Razia Begum Laskar was sought to be deleted from the List of Teachers working in the said Madrassa while the Government was going to grant financial aid to the said Madrassa by virtue of its seniority of recognition. In her writ petition a direction was sought by the respondent No. 6 that she should be provided with her share of financial assistance, as Assistant Teacher of the Mohammadia Senior Madrassa, Nitainagar, Hailakandi.

4. This Court while considering the said WP(C) 3627 of 2006 filed by respondent No. 6, deemed it appropriate to close the writ petition by directing on 6.9.2006 that the representation dated 5.6.2006 filed by the writ petitioner (Annexure G) be considered and disposed of by the Deputy Director, (Madrassa Education), Assam.

5. Pursuant to the said direction given by this Court on 6.9.2006, the Deputy Director, Madrassa Education, Assam purported to have considered the representation filed by Razia Begum Laskar. The Deputy Director took note of the provisions under Appendix I of Assam Education Department Rules and Orders, and held that the Managing Committee of a Madrassa can appoint and dismiss an employee without prior approval of the higher authority. On the basis of such purported finding, the Deputy Director, Madrassa Education, Assam, held that appointment of writ petitioner in place of respondent No. 6 is illegal. Accordingly, a direction was given to the Managing Committee by the impugned order dated 22.1.2006 passed by the Deputy Director, to allow the respondent No. 6, Razia Begum Laskar to continue her services as an Assistant Teacher and further directing the release of the writ petitioner from the post of Assistant Teacher with immediate effect. These directions were passed by proceeding o the basis that the writ petitioner was appointed to a teacher’s post earlier held by the respondent No.6.

Being aggrieved by the order dated 22.1.2007, passed by the Deputy Director, the present writ petition has been filed challenging the said order which has led to the termination of services of the writ petitioner.

6. Mr A Sharif, learned counsel appearing for the petitioner contends that the aforesaid order dated 22.1.2007 has been passed in breach of the principles of natural justice inasmuch as, no opportunity was given to the writ petitioner prior to the passing of the impugned order dated 22.1.2007 resulting in termination of services of the writ petitioner.

The next contention made by the learned counsel appearing for th e petitioner is that this Court's direction dated 6.9.2006 in WP(C) No 3627/2006 enabled the Deputy Director to only dispose of the representation dated 5.6.200 6 of the respondent No. 6 and while considering the said representation, the Dep uty Director could not have passed the impugned order which have resulted in ter mination of the services of the writ petitioner.

Thirdly, it is contended by Mr. Sharif that under Appendix I o f the Assam Education Department Rules and Orders, the power of appointment and dismissal of employees in a Private but Government aided School is available onl y under the Managing Committee of the School and such power of appointment and d ismissal cannot be exercised by the Deputy Director of the Education Department and accordingly, the impugned order dated 22.1.2007 has been passed in excess of the powers and jurisdiction of the said authority.

It is lastly submitted that the respondent No. 6 although was in itially appointed as a teacher in the Mohammadia Senior Madrassa, Nitainagar, Ha ilakandi, she shortly left the School on her own volition. Several other teacher s of Madrassa who were also appointed like the respondent No. 6 had also discont inued their services in the Madrassa many years ago. In the resultant vacancies several teachers, including the writ petitioner were appointed. This can be noti ced from the Inspection Report dated 20.12.2004 of the Mohammadia Senior Madrass a, Nitainagar, Hailakandi where the name of the writ petitioner is very much sho wn whereas the name of the respondent No. 6 is missing from amongst the list of Teachers of the said Madrassa.

7. Countering the arguments of the writ petitioner it is submitted by Mr A M Mazumdar, learned Senior Counsel appearing for the respondent No. 6 th at she was appointed as a Teacher in the Madrassa much before the writ petitione r was appointed and the name of respondent No. 6 was clearly reflected in the ea rlier Inspection Report dated 4.3.1998 which has been appended as an Annexure to the counter affidavit filedby Razia Begum Laskar.

It is further contended by Mr A. M. Mazumdar, learned Senior Cou nsel while the said Madrassa was accorded permission by the Secretary, State Mad rassa Education Board on 16.2.99, it was clearly indicated that the said permiss ion of recognition has been granted as per the staff strength notified in the In spection Report dated 4.3.1998 and no fresh appointment of any staff shall be ma de by the Managing Committee, without prior permission of the Secretary of the S tate Madrassa Education Board.

On the basis of the aforesaid stipulation made in the recognitio n order dated 16.2.99, it is contended that the appointment of the writ petition er, who was appointed after 16.2.99, could not have been made by the Managing Co mmittee, without prior permission and accordingly, the writ petitioner cannot ha ve any right to claim the post of an Assistant Teacher of the Madrassa in questi on.

It is also argued that while passing the impugned order dated 22 .1.2007, the representative of the Managing Committee who was the appointing aut hority of the writ petitioner was heard by the Deputy Director and accordingly, the requirement of principles of natural justice has been fulfilled, and it is c ontended that although the writ petitioner has not been heard, no interference o f the writ Court is called for in respect of the impugned order passed by the De puty Director.

8. Ms. M. Gogoi, learned Standing counsel for the Education Departm ent contends that under Appendix I of Assam Education Department Rules and Ord ers, in respect of private Schools which receive financial assistance, the power of appointment and termination is to be exercised by the Managing Committee. Bu

t since a condition is stipulated at the time of recognition of the Madrassa in question in the communication dated 16.2.99 that no staff would be appointed without prior permission, the impugned order passed by the Deputy Director interfering with the services of the writ petitioner is perfectly justified in as much as the writ petitioner has been appointed by the Managing Committee without obtaining prior permission of the higher authorities.

9. If after 16.2.1999, no appointment of any staff in Mohammadia Senior Madrassa can be made without prior permission of the Secretary of the Madrassa Education Board, Assam, all the appointments made on or after 16.2.1999, in the said Madrassa, would be in violation of the said requirement of obtaining prior permission stipulated in the order dated 16.2.1999.

In the list of staff shown in the Inspection Report dated 20.12.2004 conducted by the Deputy Director, Madrassa Education, names of 21 staff members have been shown. Of this 21 staff members, it appears that 14 staff members have been appointed after 16.2.99. All these 14 persons including the writ petitioner, have obviously been given appointment by the Managing Committee, without obtaining prior permission of the Secretary, State Madrassa Education Board, Assam. When so many persons have been appointed, it cannot be said in the absence of specific materials, as to which of the later appointees have been appointed against which vacant post of the former teachers.

Thereafter, if the writ petitioner has been chosen to make way for accommodating the respondent No. 6 on the purported ground that his appointment has been made by the Managing Committee without prior permission, it is not understood why the writ petitioner is singled out for accommodating respondent No. 6, disregarding the other 13 appointees who too were appointed after 16.2.1999.

No satisfactory justification could be furnished either by the counsel appearing for the Education Department nor by the counsel appearing for the respondent No. 6, to indicate why amongst all the 14 so called illegal appointees, the writ petitioner has been singled out to make room for respondent No. 6.

10. The direction of this Court made on 6.9.2006 in WP(C) No. 3627/2006 was specific i.e. to dispose of the representation dated 5.6.2006 of Razia Begum Laskar. In the said representation dated 5.6.2006 filed by respondent No. 6, no claim has been made by her against the writ petitioner and her prayer in the representation dated 5.6.2006 was simply to include her name in the list of Teachers and not to disburse any financial assistance to the Madrassa, without inclusion of her name.

While considering and disposing of the said representation filed by respondent No. 6, the Deputy Director stated that the respondent No. 6 was discharged from her services by the Managing Committee without giving her any opportunity to show cause for her unauthorised absence and that the Managing Committee cannot discharge any employee without prior approval of the higher authority.

On the basis of the aforesaid conclusion, by the impugned order dated 22.1.2007 a direction was issued by the Deputy Director to continue the respondent No. 6 in service and to discontinue the service of the writ petitioner.

11. There is no material whatsoever to indicate that the writ petitioner has been appointed in the post earlier held by respondent No. 6. Therefore, it is difficult to comprehend as to why the writ petitioner was chosen to accommodate respondent No. 6 as a Teaching Staff of the Madrassa through the impugned

order dated 22.1.2007.

12. The stand taken by the Departmental Counsel is that the Managing Committee had made the appointment in violation of the condition of obtaining prior permission and the termination of the writ petitioner is sought to be justified on this ground.

But it is not reflected either through the pleadings or through the submissions as to why amongst all the appointees, the writ petitioner has been picked up for making way for respondent No. 6 and why none of 13 similar such other appointees have been so selected.

13. It must also be borne in mind that the impugned order dated 22.1.2007 has been passed without affording any opportunity to the aggrieved party i.e. the writ petitioner. Affording of an opportunity to the Managing Committee of the School, would not justify the termination order against the writ petitioner in breach of the principles of natural justice as it is the writ petitioner who has been thrown out of service, by the impugned order dated 22.1.2007. There is no finding that the writ petitioner has been appointed to a post earlier held by the respondent No. 6.

14. There is also serious doubt about the power of the Deputy Director to order termination of service of the writ petitioner, while considering the representation dated 5.6.2006 of respondent No. 6, as the power of appointment and termination under Appendix I of the Assam Education Department Rules and Orders, clearly vests on the Managing Committee of the School. In fact, there is an agreement at the Bar that it is the Managing Committee which has the power of appointment and termination in respect of Staff in a venture School which is receiving Government Financial Aid.

15. In view of the above discussions, I am satisfied that the impugned order dated 22.1.2007 (Annexure 1) is vitiated in law and the same is unsustainable.

16. As there was a direction passed by this Court on 6.9.2006 in WP(C) No. 3627/2006 to consider the representation dated 5.6.2006 of respondent No. 6, the said representation has to be complied with. But in view of the conduct of the Deputy Director, Madrassa Education who had passed the order dated 22.1.2007, it is considered appropriate to direct disposal of the said representation, by the Director, Madrassa Education, Assam. However, it is made clear that the Director would confine his consideration only to the representation dated 5.6.2006 and shall not do anything beyond his powers.

17. If any one is to be heard while considering the said representation of the respondent No. 6, the Director would ensure that adequate opportunities are made available to such persons, prior to taking any adverse decision/recommendation in respect of such person or persons.

18. The consideration of representation may be made by the Director expeditiously and preferably within a period of 2 (two) months from the date of receipt of this order. For this purpose the writ petitioner and the respondent No. 6 will approach the Director, Madrassa Education, Assam and furnish a copy of Court’s orders in this case and also in the WP(C) No. 3627/2006 disposed off on 6.9.2006, respectively.

19. With the aforesaid directions, this writ petition stands allowed. No cost.